

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE BANK OF AMERICA CORP. : Master File
SECURITIES, DERIVATIVE, AND : No. 09 MD 2058 (PKC)
EMPLOYEE RETIREMENT INCOME :
SECURITY ACT (ERISA) LITIGATION : ECF Case
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THIS DOCUMENT RELATES TO :

Consolidated Securities Action :

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**DECLARATION OF BRIAN M. BURNOVSKI IN SUPPORT OF
OUTSIDE DIRECTORS' MOTION FOR SUMMARY JUDGMENT**

I, Brian M. Burnovski, declare as follows:

1. I am an attorney admitted to practice before this Court and an associate with the firm of Davis Polk & Wardwell LLP, counsel for the Outside Directors in the above-captioned action.¹ I submit this declaration in support of the Outside Directors' Motion for Summary Judgment.

2. Attached to this Declaration are true and correct copies of the following documents:

Exhibit 1: Excerpts from Transcript of Delaware Deposition of William Barnet, III (Oct. 11, 2011);²

Exhibit 2: Excerpts from Transcript of Delaware Deposition of Frank P. Bramble, Sr. (June 21, 2011);

¹ Unless otherwise indicated, capitalized terms shall have the same meaning as defined in the Memorandum of Law in Support of Outside Directors' Motion for Summary Judgment.

² "Delaware Deposition" refers to testimony taken in the parallel derivative action pending in the Delaware Court of Chancery.

- Exhibit 3: Excerpts from Transcript of Delaware Deposition of John T. Collins (Sept. 9, 2011);
- Exhibit 4: Excerpts from Transcript of Delaware Deposition of Gary Countryman (June 14, 2011);
- Exhibit 5: Excerpts from Transcript of Delaware Deposition of Tommy R. Franks (Oct. 4, 2011);
- Exhibit 6: Excerpts from Transcript of SDNY Deposition of Charles Gifford (Dec. 8, 2011);³
- Exhibit 7: Excerpts from Transcript of SDNY Deposition of Kenneth D. Lewis (Mar. 27, 2012);
- Exhibit 8: Excerpts from Transcript of SEC Deposition of Kenneth D. Lewis (Oct. 30, 2009);⁴
- Exhibit 9: Excerpts from Transcript of Delaware Deposition of Monica Lozano (July 7, 2011);
- Exhibit 10: Excerpts from Transcript of Delaware Deposition of Thomas J. May (Dec. 15, 2011);
- Exhibit 11: Excerpts from Transcript of SDNY Deposition of Thomas J. May (Dec. 21, 2011);
- Exhibit 12: Excerpts from Transcript of NYAG Examination of Thomas J. May (Oct. 22, 2009);⁵
- Exhibit 13: Excerpts from Transcript of Delaware Deposition of Patricia E. Mitchell (May 19, 2011);
- Exhibit 14: Excerpts from Transcript of Delaware Deposition of Thomas M. Ryan (Oct. 6, 2011);
- Exhibit 15: Excerpts from Transcript of Delaware Deposition of O. Temple Sloan, Jr. (Oct. 19, 2011);
- Exhibit 16: Excerpts from Transcript of Delaware Deposition of Robert Tillman (Aug. 4, 2011);

³ “SDNY Deposition” refers to testimony taken in this Action.

⁴ “SEC Deposition” refers to testimony taken in *Securities and Exchange Commission v. Bank of America*, No. 09-CV-6829 (S.D.N.Y.).

⁵ “NYAG Examination” refers to testimony taken by the Office of the New York Attorney General.

- Exhibit 17: Excerpts from Transcript of Delaware Deposition of Jacquelyn M. Ward (June 10, 2011);
- Exhibit 18: Excerpts from Transcript of SDNY Deposition of Teresa Brenner (Dec. 13, 2011);
- Exhibit 19: Excerpts from Transcript of SDNY Deposition of Neil A. Cotty (Mar. 16, 2012);
- Exhibit 20: Excerpts from Transcript of SEC Deposition of Neil A. Cotty (Dec. 16, 2009);
- Exhibit 21: Excerpts from Transcript of SDNY Deposition of Gregory Curl (Jan. 22, 2012);
- Exhibit 22: Excerpts from Transcript of Delaware Deposition of Nicholas Demmo (Jan. 13, 2012);
- Exhibit 23: Excerpts from Transcript of SDNY Deposition of Nicholas Demmo (Mar. 5, 2012);
- Exhibit 24: Excerpts from Transcript of SDNY Deposition of Christopher Hayward (Nov. 21, 2011);
- Exhibit 25: Excerpts from Transcript of Delaware Deposition of Timothy J. Mayopoulos (Dec. 22, 2011);
- Exhibit 26: Excerpts from Transcript of SDNY Deposition of Timothy J. Mayopoulos (Mar. 30, 2012);
- Exhibit 27: Excerpts from Transcript of SDNY Deposition of Joe L. Price (Apr. 5 & 6, 2012);
- Exhibit 28: Excerpts from Transcript of NYAG Examination of Joe L. Price (Mar. 16, 2009);
- Exhibit 29: Excerpts from Transcript of SDNY Deposition of John Thain (Mar. 22, 2012);
- Exhibit 30: Materials for the Special Meeting of the Board held on Sept. 14, 2008, bearing the Bates numbers BAC-ML-NYAG70288212 to BAC-ML-NYAG70288223;
- Exhibit 31: Minutes of the Special Meeting of the Board held on Sept. 14, 2008, bearing the Bates numbers UR-BAC-ML-NYAG00003747 to UR-BAC-ML-NYAG00003761;

- Exhibit 32: Minutes of the Special Meeting of the Board held on Sept. 19, 2008, bearing the Bates numbers BAC-ML-NYAG00003762 to BAC-ML-NYAG00003772;
- Exhibit 33: Notes of the Voluntary Telephone Conference of the Board held on Sept. 26, 2008, bearing the Bates numbers BAC-ML-NYAG00288040 to BAC-ML-NYAG00288042;
- Exhibit 34: Notes of the Voluntary Telephone Conference of the Board held on Oct. 3, 2008, bearing the Bates numbers BAC-ML-NYAG00287713 to BAC-ML-NYAG00287715;
- Exhibit 35: Materials for the Special Meeting of the Board held on Oct. 5, 2008, bearing the Bates numbers BAC-ML-NYAG00821092 to BAC-ML-NYAG00821154;
- Exhibit 36: Minutes of the Special Meeting of the Board held on Oct. 5, 2008, bearing the Bates numbers BAC-ML-NYAG00003773 to BAC-ML-NYAG00003787;
- Exhibit 37: Email from Kenneth Lewis to the Board, dated Oct. 7, 2008, bearing the Bates number BAC-DIR-SDNY00003755;
- Exhibit 38: Materials for the Special Meeting of the Board held on Oct. 15, 2008, marked as Plaintiffs' Exhibit 67 and bearing the Bates numbers BAC-ML-NYAG00814155 to BAC-ML-NYAG00814184;
- Exhibit 39: Minutes of the Special Meeting of the Board held on Oct. 15, 2008, marked as Plaintiffs' Exhibit 66 and bearing the Bates numbers BAC-ML-CL00042071 to BAC-ML-CL00042087;
- Exhibit 40: Presentation to the Board in connection with its Regular Meeting held on Oct. 22, 2008, bearing the Bates numbers UR-BAC-ML-NYAG00287749 to UR-BAC-ML-NYAG00287776;
- Exhibit 41: Minutes of the Regular Meeting of the Board held on Oct. 22, 2008, bearing the Bates numbers BAC-ML-NYAG00003809-UR to BAC-ML-NYAG00003829-UR;
- Exhibit 42: Notes of the Voluntary Telephone Conference of the Board held on Nov. 7, 2008, marked as Plaintiffs' Exhibit 135 and bearing the Bates numbers UR-BAC-ML-DE00009948 to UR-BAC-ML-DE00009950;
- Exhibit 43: Notes of the Voluntary Telephone Conference of the Board held on Nov. 21, 2008, bearing the Bates numbers BAC-ML-NYAG00287707 to BAC-ML-NYAG00287709;

- Exhibit 44: Notes of the Voluntary Telephone Conference of the Board held on Dec. 5, 2008, bearing the Bates numbers BAC-ML-NYAG00287705 to BAC-ML-NYAG00287706;
- Exhibit 45: Presentation to the Board in connection with its Regular Meeting on Dec. 9, 2008, bearing the Bates numbers BAC-ML-NYAG10006634 to BAC-ML-NYAG10006700;
- Exhibit 46: Relevant excerpts of the BAC Form DEF 14A (Annual Proxy Statement) for the period ended April 28, 2008 (filed with the SEC on Mar. 19, 2008);
- Exhibit 47: Relevant redacted excerpts of the Disclosure Schedules to Agreement and Plan of Merger by and between Merrill and BAC, dated Sept. 15, 2008, bearing the Bates numbers BAC-ML-NYAG00000280-UR and BAC-ML-NYAG00000292-UR to BAC-ML-NYAG00000294-UR;
- Exhibit 48: BAC Form 8-K filed with the SEC on Sept. 18, 2008, attaching Merger Agreement;
- Exhibit 49: Email from Brenda Meredith (on behalf of Kenneth Lewis) to William Barnet et al., dated Sept. 22, 2008, bearing the Bates number BAC-DIR-SDNY00002292;
- Exhibit 50: Form 425B5 Prospectus Supplement, dated Oct. 7, 2008 (filed by BAC with the SEC on Oct. 9, 2008) for BAC offering of 455 million shares of common stock, attaching Prospectus dated May 5, 2006;
- Exhibit 51: Form DEF 14A (Merger Proxy Statement), dated Oct. 31, 2008 (filed jointly by BAC and Merrill with the SEC on Nov. 3, 2008);
- Exhibit 52: Relevant excerpts of the Merrill Form 10-Q for the period ended Sept. 26, 2008 (filed with the SEC on Nov. 5, 2008);
- Exhibit 53: Relevant excerpts of the BAC Form 10-Q for the period ended Sept. 30, 2008 (filed with the SEC on Nov. 6, 2008);
- Exhibit 54: Email from Nancy Meloth to Neil Cotty, dated Nov. 12, 2008, attaching Merrill 2008 4Q & FY Forecast, marked as Plaintiffs' Exhibit 241, and bearing the Bates numbers BAC-ML-NYAG10106372 to BAC-ML-NYAG10106387;
- Exhibit 55: Merrill 2008 4Q and FY Forecast, dated Nov. 12, 2008, with handwritten notes of Joe Price, bearing the Bates numbers BAC-ML-NYAG-502-00064580 to BAC-ML-NYAG-502-00064595;
- Exhibit 56: Handwritten notes of General Tommy Franks from the Voluntary Telephone Conference of the Board held on Nov. 21, 2008, bearing the Bates numbers BAC-DIR-SDNY00000180 to BAC-DIR-SDNY00000182;

- Exhibit 57: Email from Neil Cotty to Joe Price, dated Dec. 3, 2008, attaching Merrill 2008 4Q Pacing & FY Forecast Scenario and Merrill FY2009 Plan, bearing the Bates numbers BAC-ML-NYAG10006614 to BAC-ML-NYAG10006627;
- Exhibit 58: Email from Nancy Meloth to Neil Cotty et al., dated Dec. 3, 2008, attaching Merrill FY 2009 Plan (Revised 6 p.m.) and Merrill 2008 4Q Pacing & FY Forecast Scenario and Merrill FY2009 Plan (Revised 6 p.m.), bearing the Bates numbers BAC-ML-NYAG70060260 to BAC-ML-NYAG70060272;
- Exhibit 59: Relevant excerpts of the BAC Form DEF 14A (Annual Proxy Statement) for the period ended Apr. 29, 2009 (filed with the SEC on Mar. 18, 2009); and
- Exhibit 60: Blackline Comparison of Lead Plaintiffs' Consolidated Second Amended Class Action Complaint to the Consolidated Amended Class Action Complaint.

3. I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
June 3, 2012

s/ Brian M. Burnovski
Brian M. Burnovski